

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MAURICIO REYES HERNANDEZ, AR7908,

Petitioner,

v.

ROSEMARY NDOH, Warden,

Respondent.

Case No. [17-cv-06769-CRB](#) (PR)

**ORDER TO SHOW CAUSE AS
TO EXHAUSTED CLAIM**

Petitioner, a California state prisoner incarcerated at Avenal State Prison (ASP), filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging a conviction from Santa Clara County Superior Court. Per order filed on February 13, 2018, the court found that the two claims in the petition – (1) ineffective assistance of trial counsel in failing to investigate material witnesses and evidence, and (2) improper exclusion of impeachment evidence – appeared cognizable under § 2254 and ordered respondent to show cause why a writ of habeas corpus should not be granted. Respondent instead moved to dismiss the petition for failure to exhaust state judicial remedies as to claim (1).

Per order filed on July 30, 2018, the court granted respondent’s motion to dismiss because petitioner only properly exhausted claim (2). But under the law of the circuit, petitioner was given the option of either withdrawing his unexhausted claim and proceeding only on his exhausted claim, or of dismissing the entire mixed petition and returning to federal court with a new petition once all claims are exhausted.

Petitioner has informed the court in writing that he wishes to “delete unexhausted claims” and receive a “decision on exhausted claims.” ECF No. 18 at 1. Good cause appearing therefor, claim (1) is dismissed and respondent is ordered to file with the court and serve on petitioner, within 60 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the

1 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be
2 granted on petitioner's claim (2) – improper exclusion of impeachment evidence. Respondent
3 shall file with the answer and serve on petitioner a copy of all portions of the state trial record that
4 have been transcribed previously and that are relevant to a determination of the issues presented.

5 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
6 court and serving it on respondent within 30 days of his receipt of the answer.

7 **IT IS SO ORDERED.**

8 Dated: September 7, 2018

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10 CHARLES R. BREYER
11 United States District Judge
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MAURICIO REYES HERNANDEZ,

Plaintiff,

v.

ROSEMARY NDOH,

Defendant.

Case No. 3:17-cv-06769-CRB

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 7, 2018, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Mauricio Reyes Hernandez ID: AR 7908
Avenal State Prison
PO Box 903
Avenal, CA 93204

Dated: September 7, 2018

Susan Y. Soong
Clerk, United States District Court

By: 
Lashanda Scott, Deputy Clerk to the
Honorable CHARLES R. BREYER